

Florida Deepwater Horizon Response and Recovery Workgroup #3: Review Scope of Private Sector Damages and Processes for Compensation

Representatives Crisafulli (Lead), Ford, Grady, Long, Rouson, Wood

Task: To review the claims processes and damages available to private citizens and businesses and:

- Determine options available under the independent claims process set up by BP (and its transition to an independent administrator).
- Determine applicability and options under relevant state and federal laws.
- Identify conflicts and barriers in current law and any deficiencies that limit remedies.
- Work with federal officials, the independent claims administrator and the key industries impacted to ensure the public has a clear understanding of the process, procedures and timing for recouping losses or other damages.
- Determine if there are interim or supplemental measures the state should consider that would complement this new process or state and federal law.

Work Plan

I. Week 1 (July 26-30)

- a. Review Federal Oil Pollution Act to determine what private sector damages are compensable and the processes for claims.
- b. Review State Pollutant Discharge Prevention and Control Act to determine what private sector damages are compensable and the processes for claims.
- c. Identify resources and contacts for assistance; compile contact information.
- d. Identify other government groups and task forces created in response to the recovery act; compile contact information.
- e. Submit a briefing paper on the federal and state acts to the Members of the workgroup at the beginning of Week 2.

Summary of Week 1 Activities:

The members of the group were provided with links to the state and federal laws, as well as a list of other national and state task forces relating to the oil spill. In addition, a briefing paper was prepared and distributed to the workgroup members. A copy of the documents may be found on the [workgroup's resource page](#).

II. Week 2 (August 2-6)

- a. Meet with and conduct conference calls with parties participating in the independent claims process.

- b. Conduct conference calls with parties that may have participated in such claims processes for prior disasters.
- c. Review potential state and federal tort remedies. Determine their viability for recovery from this disaster.
- d. Review whether other state or federal laws may be applicable.

Summary of Week 2 Activities:

Initiated legal review of Florida law as well as laws in other states. Continued to monitor the independent claims process created by BP. On August 3, 2010, BP announced changes in the claims process intended to expedite claim payments, including establishing an Immediate Action Claims Team. Meetings were scheduled and travel plans made for group members to visit Pensacola the week of August 9 - 13 to reach out to affected groups, discuss the claims process with BP officials, attend a forum hosted by the Pensacola Chamber of Commerce with Kenneth Feinberg, administrator of the Gulf Coast Claims Facility, which will oversee the claims process beginning later this month. Please see Scheduled Events on the [House's Deepwater Horizon Response and Recovery Web site](#) and the [workgroup's resource page](#) for details and background information on these meetings.

III. Week 3 (August 9-13)

- a. Review other relevant state laws relating to claims for pollutant related damages.
- b. Determine the differences with Florida's approach and the Federal approach.
- c. Conduct conference calls with interested parties.
- d. Monitor the transition of the BP claims process to the independent administrator.
- e. Visit claims offices and persons participating in the independent claims process.

Summary of Week 3 Activities:

Continued legal review of Florida law as well as laws in other states. Work group members traveled to Pensacola on August 10, 2010, to meet with Liz Castro, Director, Civic Affairs for BP as well as other representatives from BP regarding the claims process. BP representatives described the process, provided summary claims information relating to Florida, and agreed to follow up to provide additional details regarding private claims. Further, members attended a town hall meeting where Sen. Bill Nelson and Ken Feinberg, administrator of the Gulf Coast Claims Facility, spoke and responded to questions. A link to an excerpt of opening remarks by Ken Feinberg at the August 10, 2010 Public Forum, sponsored by the University of West Florida and the Pensacola Bay Area Chamber of Commerce, is available on the [workgroup's resource page](#).

- The Gulf Coast Claims Facility (GCCF) will take over the private claims process on August 23, 2010
 - GCCF is not a government or BP program – both the program and Feinberg are independent
 - Fund will include \$20 billion paid by BP over a 4 year period; however, this is not a floor or ceiling
- Use of the GCCF is strictly voluntary; claimants may choose to go directly to BP or court

- In Feinberg's opinion, the GCCF will be quicker, more generous and more efficient than any other remedy under federal or state law
- All claims offices will remain open, at least initially
 - Claims may also be filed and tracked online via the GCCF website; intent is one-stop process
- Over the next 90 days (through Thanksgiving), emergency payments for up to 6 months income loss will be available, without waiving any rights to future claims
 - Payments to individuals will be made within 24 hours
 - Payments to businesses will be made within one week
- After 90 days, lump sum payments for current and future losses may be requested, however payment of such claim will require waiving rights to future claims or litigation against BP
- Documentation or proof of loss will be required for all claims, although it appears there will be flexibility in documents that will be acceptable (tax returns, contracts, bookings, profit/loss statements)
 - Neutral experts will help guide Feinberg in assessing damage
 - Will use uniform standards for all business damage claims
 - Will use least stringent law of the five affected states to define compensation for death or physical injury claims
- Deadline for final claims through the GCCF is August 23, 2013
- Pro bono legal assistance for claimants will be provided through the facility
- Claims information will remain private and confidential; summarized data will be provided to federal and state agencies as necessary
- Eligibility considerations:
 - Proximity to the Gulf
 - Type of industry
 - Dependence on natural resources of the Gulf
 - Actual physical damage to property or business is not required
 - Tourism related businesses are eligible – perception of oil on beach will be considered
 - In Feinberg's opinion, realtors/brokers do not have an eligible claim; however, Feinberg will set aside a certain amount for realtors/brokers to help them get through the emergency (details not yet available)
 - Diminishing property value is not an eligible claim unless a contract for sale of such property fell through as a result of the spill
 - Commercial bank losses are not eligible

Members also met with Buck Lee, Executive Director, Santa Rosa Island Authority, Greg Brown, Santa Rosa County Property Appraiser, and Chris Jones, Escambia County Property Appraiser, to discuss the claims process and other concerns related to the oil spill. Both property appraisers expressed concern that the oil spill had negatively impacted property values in their counties. They are working to try and assess the impact, and requested the Legislature explore options to provide relief to property owners, including a property tax rebate similar to what has been done in the past for natural disasters. Mr. Lee discussed the impact of the spill on Pensacola beach businesses and tourism, as well as the monitoring and cleanup effort. Mr. Lee hosted a short tour of the Pensacola beach area for the work group members.

A meeting was scheduled and travel plans were made for group members on August 17, 2010, to attend another town hall meeting in Pensacola and to meet with Ken Feinberg to further discuss the claims process.

Please see Scheduled Events on the [House's Deepwater Horizon Response and Recovery Web site](#) and the [workgroup's resource page](#) for additional information.

IV. Week 4 (August 16-20)

- a. Attend town hall meeting in Pensacola.
- b. Meet with Ken Feinberg on August 17th in Pensacola to discuss the BP claims process.
- c. Conduct conference calls as needed to finish information gathering.
- d. Identify the perceived successes and shortcomings of the independent claims process.
- e. Compile and analyze all the information obtained.
- f. Conduct conference call with Members for discussion; identify preliminary findings.
- g. Begin writing first draft of report.

Summary of Week 4 Activities:

Work group members traveled to Pensacola on August 17, 2010, to attend another town hall meeting in Pensacola where Ken Feinberg spoke and took questions. At the meeting, a document containing frequently asked questions about the Gulf Coast Claims Facility was distributed, as well as a Claimant Bill of Rights developed by Mr. Feinberg for the GCCF. These documents are available on the [workgroup's resource page](#).

Following the town hall meeting, the workgroup met with Mr. Feinberg for an hour and discussed the claims process. Mr. Feinberg explained that the GCCF process would go into effect on August 23 and would replace the BP claims process. The GCCF process website is now operational and may be viewed at <http://www.gulfcoastclaimsfacility.com/> The GCCF Protocol for Emergency Advance Payments and the GCCF Claim Form is available on the [workgroup's resource page](#).

Members also conducted seven conference calls with various interested parties. Calls were held with the Florida Justice Association, the Organized Florida Fishermen and the Southeastern Fisheries Association, Associated Industries of Florida, the Florida Lodging and Hotel Association, representatives of various legal services organizations, representatives of various Florida chambers of commerce, and the Florida Association of Realtors. These calls are all available as podcasts on the [House's Deepwater Horizon Response and Recovery Web site](#). The conference calls revealed the various experience of those making claims through the BP independent claims process. It was clear that everyone was wondering what the process would look like once the GCCF was up and running.

V. Week 5 (August 23-27)

- a. Finish first draft.
- b. Begin editing and writing final draft.
- c. Conduct conference call with members for final discussion.

Summary of Week 5 Activities:

The Workgroup continued to review the research and information gathered during the preceding weeks. This information will be used to prepare its final report. The Gulf Coast Claims Facility (GCCF) process became effective on Monday, August 23rd, replacing the BP process. The GCCF process website is now operational and may be viewed at <http://www.gulfcoastclaimsfacility.com/> The GCCF Protocol for Emergency Advance Payments and the GCCF Claim Form is available on the [workgroup's resource page](#).

VI. Final Report Due August 31